In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1032

MARY ETHEL FOX, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

The United States of America, appellee in the above-entitled case, pursuant to Rule 16 of the Revised Rules of this Court, moves to affirm the order of the district court on the ground that the questions raised are so insubstantial as not to warrant further argument.

QUESTIONS PRESENTED

1. Whether appellant, the Registrar of Voters of Plaquemines Parish, Louisiana, is an agent of the State of Louisiana or of the Louisiana Board of Registrars and thus bound by the orders of the dis-

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trict court enjoining the State, the Board and their agents.

2. Whether an order entered by a single judge sitting in another division of the court below requiring appellant to treat Negro applicants for voter registration no differently than she treats white applicants—but which does not specify the tests she may use—conflicts with the order of the court below which enjoins her from using a new multiple-choice "citizenship" test with respect to certain applicants.

STATEMENT

This is a direct appeal from a supplementary order of the district court specifically directing appellant, the Registrar of Voters of Plaquemines Parish, Louisiana, to comply with the court's earlier injunction in *United States* v. *Louisiana,* since affirmed here, 380 U.S. 145.

On January 28, 1964, the three-judge district court in the *Louisiana* case, *supra,* issued its decree. Insofar as relevant here, the judgment (J.S. 5–8) specifically enjoined the defendants (the State of Louisiana, members of the Louisiana Board of Registration, and the Director and *ex officio* Secretary of the Board) and their agents, including all parish registrars of voters in twenty-one specified parishes, including Plaquemines, who were referred to by name, from requiring, absent a general reregistration of all voters in the parish, any applicant for registration of voting age and possessed of the residence requirements as of August 3, 1962, to take a new multiple-choice "citizenship" test as a prerequisite to registration to vote, and ordered them to file monthly reports with

the court (J.S. 6–7). *United States* v. *Louisiana*, 225 F. Supp. 353. On June 1, 1964, the United States filed in the district court a "Petition For An Order To Show Cause Why [Appellant] Should Not Be Held In Contempt." The petition alleged that on February 7, 1964, appellant had been personally served with a copy of the January 28, 1964, decree; that since that date appellant had "violated and disobeyed, and continues to violate and disobey" such decree by "administer[ing] the multiple choice 'citizenship' test as a prerequisite to registration to vote to applicants who were of age and possessed the residence requirements as of August 3, 1962"; and that appellant had failed to file monthly reports as required by the decree. On June 29, 1964, the district court ordered appellant to answer the allegations set forth in the petition of the United States by July 7, 1964, and to appear before the court on that day to show cause why she should not be held in contempt. The court directed the clerk to serve appellant by mail with a copy of the order. In her response appellant asserted (1) that she had not been properly served with process in the cause, and hence was not properly before the court; (2) that she had never been a party to the cause; (3) that she was a party to *United States* v. *Fox*, No. 11,625 (E.D. La.), and that the court therein had ordered her to use the "citizenship" test;[1] and (4) that she had fairly administered the "citizenship" test to all.

[1] *United States* v. *Fox*, No. 11,625 (E.D. La.), was a proceeding under 42 U.S.C. 1971(c) before a single judge.

On July 7, 1964, the court held a hearing at which all the facts were stipulated. It was agreed that appellant was not a named defendant in *United States* v. *Louisiana;* that the first formal notice of these proceedings which she received was on February 7, 1964, when she was personally served with a copy of the court's decree; and that she had made no personal appearance in this case. It was further stipulated that appellant was a named defendant in *United States* v. *Fox,* Civil Action No. 11,625 (E.D. La.); that she had filed written reports with the Clerk of the United State District Court for the Eastern District of Louisiana, New Orleans Division, pursuant to a court order in that case; and that the accuracy of these reports had not been questioned. The stipulation further provided that appellant had not filed reports captioned *United States* v. *Louisiana* with the Clerk of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division; and that since February 7, 1964, she had continued to require all applicants for registration to take and pass the multiple choice citizenship test.

On November 30, 1964, the three-judge district court issued the supplementary order now contested (J.S. 9–10), directing appellant to cease forthwith from using the "multiple choice" test as a prerequisite to voter registration with respect to applicants who met age and residence requirements as of August 3, 1962. Appellant was further ordered to give the court written assurances that she would no longer use the "multiple-choice" test and to submit reports

in accordance with the provisions of the court's decree of January 28, 1964.

ARGUMENT

Appellant asks this Court to review the November 30, 1964, supplementary order of the three-judge district court. Insofar as it directs appellant to stop using the multiple-choice "citizenship" test with respect to applicants who met age and residence requirements as of August 3, 1962, the order is no more than a reiteration, for appellant's benefit, of that portion of the January 28, 1964, decree of the same court in the same action which restrains twenty-one specified registrars of voters, including appellant, from applying the "citizenship" test to such applicants. The merits of the injunction are foreclosed by this Court's affirmance of the earlier decree.[2]

Appellant's assertion that, since she had not been made a party to the original proceedings below, she is not bound by the orders of the lower court is without merit. It is settled that one not a party may be amenable to an injunction. *E.g., In re Lennon,* 166 U.S. 548, 554; *Hill* v. *United States,* 33 F. 2d 489, 490 (C.A. 8); *Alemite Mfg. Corp.* v. *Staff,* 42 F. 2d 832 (C.A. 2); *Reich* v. *United States,* 239 F. 2d 134 (C.A. 1), certiorari denied, 352 U.S. 1004. To be sure, the

[2] The Court also upheld the order requiring the registrars of the 21 parishes to make monthly reports concerning the registration of voters as an "appropriate exercise of the District Court's discretion * * *, in order that the court might be informed as to whether the old discriminatory practices really had been abandoned in good faith." *Louisiana* v. *United States, supra* at 155–156.

person sought to be bound must be identified in interest with the parties defendant, in privity with them, represented by them, or subject to their control. See *Regal Knitwear Co.* v. *N.L.R.B.*, 324 U.S. 9, 14; *Chase Nat'l Bank* v. *Norwalk*, 291 U.S. 431. Rule 65(d) of the Federal Rules of Civil Procedure expressly recognizes that an injunction may bind "agents" of a party.[3] Since appellant is an agent of the defendant State, Louisiana, is subject to the control of the defendant State Board of Registrars (see *Louisiana* v. *United States*, 380 U.S. at 151, n. 10), and was personally served with the decree, she is bound by the decree and must comply with it.

Appellant also argues that she is not required to comply with orders of the three-judge court while complying with allegedly conflicting orders of another division of the lower court in *United States* v. *Fox*, No. 11,625.[4] The short answer is that the orders are not conflicting. Although the court in No. 11,625 did not restrain appellant from using the "citizenship" test, neither did it compel her to use it. The decree in No. 11,625 required only that she treat Negro applicants in every particular no differently than she treats white applicants. The decree is silent as to

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[3] Rule 65(d) provides, in pertinent part, that:

> Every order granting an injunction * * * is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

[4] The decree in *United States* v. *Fox*, is set forth in full on pages 39–42 of the Jurisdictional Statement.

which tests she may use. That question was settled by the later judgment in the *Louisiana* case.

Even if appellant believes the orders to be in conflict, she may not ignore the decree of the three-judge court. It is fundamental that a belief in the invalidity of a decree is no justification for disregarding its command. As the Court said in *Gompers* v. *Bucks Stove and Range Co.*, 221 U.S. 418, 450:

> If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the "judicial power of the United States" would be a mere mockery.

CONCLUSION

Appellant presents no substantial question for decision by this Court. We respectfully submit that the order of the district court should be affirmed.

ARCHIBALD COX,
Solicitor General.

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